



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/149589

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 13, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on June 18, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner's appeal was timely filed.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Lareina Horton, Child Care Subsidy Specialist  
Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St.  
2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner worked for Nurses Now, a temporary agency. Her last day of employment and the last day she worked was December 28, 2011. (Testimony of Petitioner; Exhibit 2, pgs. 51 and 52.)

3. Petitioner attended classes at Waukesha County Technical School between January 23, 2012 and January 30, 2012. (Exhibit 2, pg. 29; testimony of Petitioner)
4. On January 24, 2013, MECA sent Petitioner a Child Care Overpayment Notification, Claim Number [REDACTED], indicating that she was overpaid benefits in the amount of \$995.06 for the period of January 1, 2012 and January 31, 2012. (Exhibit 2, pg. 11)
5. Petitioner timely received the notice, but attempted to get the matter corrected through the child care provider, without success. (Testimony of the Petitioner)
6. The petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 13, 2013.

### **DISCUSSION**

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning Child Care Benefits must be filed within 45 days of the notice or the effective date of the negative action, whichever is later. Wisconsin Stat. § 49.152(1), WI Admin Code §HA 3.05(3). A negative action can be the denial of an application or a denial of payment of Child Care Benefits. Because the petitioner's appeal was filed 109 days after the county agency's negative action concerning Child Care Benefits, it is untimely.

Petitioner asserts that her children were not in daycare during the first three weeks of January 2012 and that the provider fraudulently billed the Shares program. Petitioner is encouraged to keep in contact with the Department of Children and Families Fraud Detection and Investigation Unit, especially since she indicated a willingness to testify against the childcare provider:

- Send an e-mail to [REDACTED]
- Write to:  
Department of Children and Families  
Fraud Detection and Investigation Unit  
[REDACTED]  
[REDACTED]

Petitioner should note that even if her appeal was timely, I would have found that she was overpaid benefits for at least the last week of January 2012, because even though she was NOT enrolled in the W-2 program and WAS attending a technical college, she WAS NOT working at least 5 hours a week at that time. *See Wisconsin Child Care Assistance Manual §1.5.7.*

With regard to the remaining weeks, DCF might want to review those weeks since the only evidence of attendance was the uncorroborated hearsay of the childcare provider, in its billing to the Shares program. The record of the January 23, 2012 visit to the childcare facility only establishes the children's attendance on that one day; it does not prove their attendance for the remainder of the month. Further, there were no SISO (sign-in/sign-out) sheets with Petitioner's signature, to prove she dropped the children off at the daycare.

### **CONCLUSIONS OF LAW**

There is no jurisdiction as the appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

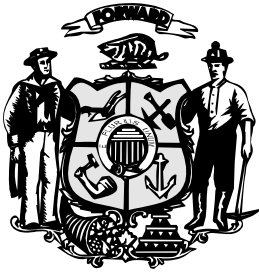
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 19th day of June, 2013.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 19, 2013.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud